

Application No. 09/661,016  
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### REMARKS

Entry of the foregoing, and further and favorable reconsideration of the subject application are respectfully requested. By the present Amendment, the new claims 28-34 have been added. New claim 28, relating to a method of controlling insects selected from the group consisting of: *Pieris brassicae*, *Phthorimeae operculella*, and *Plutella xylostella*, derives support at least from page 38 of the application as originally filed, which states:

Bt2 and Bt14 toxins are toxic to *P. brassicae* (p.b.), *P. xylostella* (p.x.) and *P. operculella* (p.o.) as seen from the table below.

	LC <sub>50</sub> of Toxins	
	Bt2	Bt14
P.b.	1.3	2.0
P.x.	6.7	5.4
P.o.	4.20	0.8-4.0

Claim 29 is related to a DNA according to claim 24, wherein the TTG bacterial start codon is changed to an ATG codon for expression in plants (also changing the second codon to an Alanine). This claim derives support at least from page 29 of the application as filed:

According to Brizzard and Whiteley (1988), the initiation codon of the bt14 gene is a TTG codon. Thus, a NcoI site was created in a like manner at this codon for site directed mutagenesis using a 34-mer oligonucleotide with the following sequence

5'-CCTATTTGAAGCCATGGTAACTCCTCTTTTATG-35'.

In this case the sequence of the intiation codon was converted from ATATTGA to ACCATGG. This yielded the plasmid pHW44 carrying the N-terminal fragment of the bt14 gene with a NcoI site at the initiation codon.

New claim 31, which specifies that the DNA of claim 22 may be naturally occurring or synthetic, derives support at least from the definition section at page 10 of the application as filed:

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As used herein, "gene" should be understood as a full-length DNA sequence encoding a protein (e.g., such as is found in nature), as well as a truncated fragment thereof encoding at least the active part (i.e., toxin) of the protein encoded by the full-length DNA sequence, preferably encoding just the active part of the protein encoded by the full-length DNA sequence. A gene can be naturally occurring or synthetic.

Claims 30-31 and 33-34 are identical, other than their dependency, to prior claims 24 and 26. No new matter has been added.

At pp. 4-5 of the Official Action, the Examiner has rejected claims 22, 24, and 26 under the judicially-created doctrine of obviousness-type double patenting as purportedly obvious over claims 4 and 22 of U.S. Patent No. 6,172,281, and over claims 6 and 14-15 of U.S. Patent 5,866,784. Without conceding to the merits of these rejections, enclosed herewith is a Terminal Disclaimer over U.S. Patents 6,172,281 and 5,866,784.

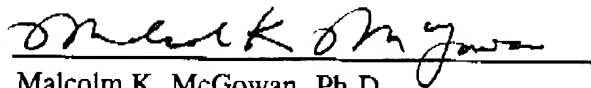
From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited.

Should the Examiner have any questions concerning the subject application, the Examiner is invited to contact the undersigned attorney at the number provided below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By:



Malcolm K. McGowan, Ph.D.  
Registration No. 39,300

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620

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